GOVERNMENT OF AHNDHRA PRADESH

A B S T R A C T

I&I Department - Termination of the Concession Agreement entered with the SPV constituted i.e Nellore International Airport Pvt. Ltd., and cancellation of orders awarding project to M/s SCL-Turbo Consortium Pvt., Ltd for development of a Greenfield Airport at Dagadarthi in Nellore district through PPP on DBFOT basis - Orders – Issued.

INFRASTRUCTURE & INVESTMENT (Airports) DEPARTMENT

G.O.MS.No. 5 Dated: 29-07-2020.

Read the following:

1) G.O.Rt.No.148, E,I&I (Air Ports) Dept., dt.15.09.2017.
2) From M/s.SCL-Turbo Consortium, Letter.No.SCL/F.No.63/073/2020-21, Dated 17.06.2020.
3) From the MD&CEO, APADCL, E-file.No.BIAC/4/2020-AIRPORTS-BIAC.

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ORDER:

The Government of Andhra Pradesh intends to develop the aviation sector in the state of Andhra Pradesh by establishing new greenfield airports to increase air connectivity and trigger economic development in the region. The Dagadarthi Airport is envisaged to be a low cost airport proposed to be developed in the Nellore district of Andhra Pradesh on Public-Private- Partnership (PPP) basis. About 1352 acres of land has been earmarked for the project. All clearances/ approvals have been received on the project from various agencies.

2. In the G.O read 1st above, Government awarded the Project of Development of Greenfield AirPort at Dagadarthi in Nellore District under PPP Mode of Design Build, Finance, Operate and Transfer (DBFOT) to M/s.SCL-Turbo Consortium Pvt., Ltd, accepting the revised financial offer with Premium (Revenue Share) of 9% to commence after 15th anniversary (i.e., from the 16th anniversary) of the commissioning of the airport with an escalation of 1% every year subject to ceiling of 30%.

3. The Letter of Award has been issued to the Bidder M/s.SCL-Turbo Consortium Pvt., Ltd., on 22.09.2017. As per the terms and conditions, the Concession Agreement (CA) should have been signed within 30 days after fulfilment of conditions of bid documents by the Selected Bidder. However due to non-fulfilment of the conditions by the Selected Bidder, there were multiple extensions provided to the Selected Bidder for signing of Concession Agreement which was finally signed on 21-06-2018. The Developer is yet to achieve the financial closure of the Project. Originally as per the agreement, the financial closure for the project was to be achieved by 21/12/2018. Multiple extensions were granted up to 15/07/2019, which is more than 1 year from the date of signing of the Concession Agreement. After 15-07-2019, no extension of time was either sought or granted.

P.T.O.,

4. In the reference 2nd read above, the SCL Turbo Consortium has informed the APADCL, that handing over of the land is basic condition for the airport development and the Financial Closure can only be achieved only on handing over the airport site. It is stated that since the land is not encumbrance free, none of their lenders are showing interest for funding the Project and as such the financial closure cannot be achieved in these circumstances rending it not possible to go ahead with the project. And therefore, proposed to resolve this issue amicably by requesting to cancel the Concession Agreement dated; 21.06.2018 and return back their Performance Security & Bid Guarantee-Original document (which is already expired) and relieve them from the Agreement without any liability on either side. Vide reference 3rd read above, the APADCL has submitted report seeking orders in matter.

5. In this regard, as per Clause 29.2 of the Concession Agreement, notwithstanding anything contained in the agreement and subject to clause 39.6.1, if financial close is not achieved for any reason whatsoever within the period prescribed under Clause 29.1.1 or the extended period provided thereunder, the agreement will be deemed to be terminated by mutual agreement of the parties. Further as per Clause 4.4, without prejudice to clause 4.2 and 4.3 and subject to provisions of Clause 9.2, if appointed date does not occur for any reason whatsoever before the 1st anniversary of signing of the agreement or within extended period provided under the agreement, the concession agreement will be deemed to be terminated by mutual agreement of the parties. Thus as per the clauses of the Concession Agreement, the financial closure is mandatory to be achieved within the period prescribed and this is an independent obligation cast upon the developer and the same is not connected to handing over of the land as per the clauses of the agreement. Moreover, as per the APADCL except for some portion of land remaining land was already made available for the project. In the present case, the developer has not achieved the Finance Close within the prescribed time, though the same is mandatory. In case of non-achieving of the Financial Close "for any reason whatsoever", the agreement will be deemed to be terminated by mutual agreement of parties as per the above clauses. Further even the appointed date as defined in the Concession Agreement is the date on which the financial closure is achieved and every other condition precedent is either satisfied or waived as per the agreement. Admittedly, the appointed date did not occur and as per Clause 4.4 also the agreement is deemed to be terminated by mutual agreement of the parties.

6. In view of the above and since the concession agreement is deemed to be terminated under Clause 29.2 and 4.4 thereof, the project cannot be implemented under the above circumstances, Government after careful examination hereby termination the Concession Agreement dated 21.06.2018, entered between the Andhra Pradesh Airports Development Corporation Ltd., (Authority) and the Nellore International Airport Private Ltd., (SPV) under Clauses 29.2 and 4.4 of the Concession Agreement and close the project, which has been awarded to SCL-TURBO Consortium vide G.O.Rt.No.148, E,I&I (Air Ports) Dept., dt.15.09.2017, for development of a Greenfield Airport at Dagadarthi in Nellore District through PPP on DBFOT basis.

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7. The Managing Director &CEO, APADCL shall take necessary action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R.KARIKAL VALVEN
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To
The MD, Andhra Pradesh Airports Development Corporation Limited, Vijayawada.
The CEO, Andhra Pradesh Airports Development Corporation Limited, Vijayawada.
Copy to
The Advisor (Aviation), GoAP.
The District Collector & Magistrate, SPSR Nellore District for favour of information.
The Finance (Expenditure) Dept.,
The Revenue (Assignments) Department.
The Municipal Administration (UBS) Department.
The GA (Cabinet) Dept.,
The P.S to Hon'ble Minister for I&I
The P.S. to C.S to Govt.,
The P.S. to Secretary to Hon'ble CM.
The P.S. to Spl. C.S to Govt., I&I Department.
(C.No.75/Airports/A1/2016)

//Forwarded :: By Order//

SECTION OFFICER